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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,195	09/30/2003	Manabu Kitamura	566.43176X00	9622
24956	7590	05/19/2006	EXAMINER	
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			JACOBS, LASHONDA T	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/673,195	<b>Applicant(s)</b> KITAMURA ET AL.	
	<b>Examiner</b> LaShonda T. Jacobs	<b>Art Unit</b> 2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 0206.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

This is a Final Office Action in response to Applicants Amendment filed on February 23, 2006.

Claims 1, -5, 7-8, 10-12, 14 and 16-18 have been amended. Claims 1-19 are presented for further examination.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Midgley et al (hereinafter, "Midgley", U.S. Pat. No. 6,460,055).

As per claim 1, Midgley discloses a computer system comprising computers, first and second servers connected to said computers, and a storage system connected to said first and second servers, with said storage system comprising a plurality of storage devices and a storage controller which controls said plurality of storage devices, wherein:

said first server (Fig. 1, reference numeral 32) comprises:

- a first memory which stores a first program (col. 8, lines 2-14, lines 28-47); and
- a first CPU which executes said first program (col. 8, lines 2-14, lines 28-47);

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said second server (Fig. 1, reference numeral 34) comprises:

- a second memory which stores a second program (col. 8, lines 2-14, lines 28-47); and
- a second CPU which executes said second program (col. 8, lines 2-14, lines 28-47);

said second program comprises:

- a part for making a request to said first server for information necessary for said second server to back up a file as a backup object said file being logically set with a path to said first server when said request is made (col. 12, lines 33-48);

said first program comprises:

- a part which responds to said request by sending said second server an identifier of a second storage device that stores duplicate data of said file (col. 12, lines 51-66); and

said second program further comprises:

- a part which obtains backup data from said duplicate data from said second storage device, based on said identifier (col. 12, lines 51-66).

As per claim 7, Midgley discloses a first server connected to computers, a second server and a storage system that comprises a plurality of storage devices and a storage controller which controls said plurality of storage devices wherein:

said first server comprises:

- a memory which stores a program (col. 8, lines 2-14, lines 28-47); and
- a CPU which executes said program (col. 8, lines 2-14, lines 28-47); and

said program comprises:

- a part which inhibits write into a file as a backup object, in response to a request by said second server for information necessary for said second server to back up said

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file, said file being set with a path to said first server when said request is made (col. 17, lines 36-53);

- a part which generates duplicate data of said file; and
- a part which writes inhibited data waiting to be written into said file a first storage device in which said file is stored, while said file is being duplicated (col. 17, lines 36-53); and
- a part which sends said second server an identifier of a second storage device that stores said duplicate data (col. 12, lines 51-66).

As per claim 10, Midgley discloses a second server connected to a plurality of computers, a first server and a storage system that comprises a plurality of storage devices and a storage controller for controlling said plurality of storage devices, wherein:

said second server comprises:

- a memory which stores a second program (col. 8, lines 2-14, lines 28-47); and
- a CPU which executes said program (col. 8, lines 2-14, lines 28-47); and

said second program comprises:

- a part which makes a request to said server for information necessary for said second server back up a file as a backup object, said file being set with a path to said first server when said request is made (col. 12, lines 33-48);
- a part which receives an identifier of a second storage device that stores duplicate data of said file, from said first server (col. 12, lines 49-66); and
- a part which obtains backup data from said duplicate data from said second storage device, based on said identifier (col. 12, lines 49-66).

As per claim 14, Midgley discloses a backup method for performing backup in a computer system comprising a plurality of computers, first and second servers connected to said computers, and a storage system connected to said first and second servers, with said storage system comprising a plurality of storage devices and a storage controller which controls said plurality of storage devices, wherein:

- said second server makes a request to said first server for information necessary for said second server to backup a file up as a backup object, said file being set with a path to said first server when said request is made (col. 12, lines 33-48);
- said first server sends an identifier of a second storage device that stores duplicate data of said file, in response to said request (col. 12, lines 49-66); and
- said second server obtains backup data from said duplicate data from said second storage device, based on said identifier (col. 12, lines 49-66).

As per claims 2 and 12, Midgley discloses:

- said second server is further connected to a backup server (col. 7, lines 1-13); and
- said second program further comprises a part which sends the obtained backup data to said backup server (col. 12, lines 51-66).

As per claims 3 and 11, Midgley discloses:

- said second program further comprises a part which sets the second server with a path to said second storage device, based on said identifier (col. 12, lines 49-66).

As per claim 4, Midgley discloses wherein:

- said file is stored in a first storage device; and

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- said first program further comprises a part which inhibits write into said file in said first storage device while said file is being duplicated to said second storage device, and which writes inhibited data, waiting to be written into said file, into said first storage device while said file is being duplicated (col. 17, lines 36-53).

As per claims 5, 8 and 18, Midgley discloses wherein said first program further comprises:

- a part which sends said storage system an ID of a port connected to said second storage device (col. 7, lines 1-9); and
- a part which receives the identifier of said second storage device, with said identifier being sent by said storage system in response to receipt of said ID (col. 12, lines 49-66).

As per claims 6, 9, 13 and 19, Midgley discloses:

- said request a directory name of the backup object (col. 11, lines 46-61).

As per claim 15, Midgley discloses:

- said second server sends the obtained backup data to a backup server connected to said second server (col. 7, lines 1-13).

As per claim 16, Midgley discloses:

- said second server sets the second server with a path to said second storage device, based on said identifier (col. 12, lines 49-66).

As per claim 17, Midgley discloses:

- said first server inhibits write into said file, and writes inhibited data, waiting to be written into said file into a first storage device in which said file is stored, while said file is being duplicated (col. 17, lines 36-53).

### ***Response to Arguments***

3. Applicant's arguments filed February 23, 2006 have been fully considered but they are not persuasive.

#### **The Office notes the following arguments:**

- a. Midgley does not disclose or suggest a program that comprises a part for making a request to the first server for information necessary for the second server to back up a file as a back up object instead of the first server, a part which responds to the request by sending the second server an identifier of a second storage device that stores duplicate data of the file, or a part which obtains backup data from the second storage device, based on the identifier.
- b. Midgley does not disclose or suggest a part for making a request to the first server for information necessary for the second server to backup a file as a backup object, the file being logically set with a path to the first server when the request is made.

#### **In response:**

(a)-(b) Applicants argue that Midgley does not disclose or suggest a program that comprises a part for making a request to the first server for information necessary for the second server to back up a file as a back up object instead of the first server, a part which responds to the request by sending the second server an identifier of a second storage device that stores duplicate data of



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the file, or a part which obtains backup data from the second storage device, based on the identifier or a part for making a request to the first server for information necessary for the second server to backup a file as a backup object, the file being logically set with a path to the first server when the request is made. However, the Examiner disagrees. Midgley teaches systems and methods for backing up data files in order to replicate data from a first server to a second (backup) server. Midgley backup process allows a user to backup a source file data by making changes between the source file and the target file. All files that are being replicated between the two servers have a destination, which is set in order to retrieve, update or copy the data. The files must have an identifier or name in order perform any type of operation on the file. Once the data is stored on the backup server the first server may request the data based on the name of the source or target file (see Midgley, col. 7, lines 50-63, col. 10, lines 6-40 and col. 12, lines 33-66). Therefore, Midgley does teach a program that comprises a part for making a request to the first server for information necessary for the second server to back up a file as a back up object instead of the first server, a part which responds to the request by sending the second server an identifier of a second storage device that stores duplicate data of the file, or a part which obtains backup data from the second storage device, based on the identifier or a part for making a request to the first server for information necessary for the second server to backup a file as a backup object, the file being logically set with a path to the first server when the request is made.

*Conclusion*

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T. Jacobs whose telephone number is 571-272-4004. The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T Jacobs  
Examiner  
Art Unit 2157

ltj  
May 12, 2006

  
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